

1 KAMALA D. HARRIS
Attorney General of California
2 JEFFREY R. VINCENT
Supervising Deputy Attorney General
3 State Bar No. 161013
1515 Clay Street, 20th Floor
4 P.O. Box 70550
Oakland, CA 94612-0550
5 Telephone: (510) 622-2127
Fax: (510) 622-2270
6 E-mail: Jeffrey.Vincent@doj.ca.gov
Attorneys for Defendant Matthew Grasmuck
7

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 PAUL HILF,

12 Plaintiff,

13 v.

14 MATTHEW GRASMUCK and ARTHUR
15 TRUJILLO,

16 Defendants.
17

CV15-03833 PSG

**DEFENDANT GRASMUCK'S
OPPOSITION TO MOTION FOR
JUDGMENT ON THE PLEADINGS**

Date: Not set
Time: Not set
Courtroom: 5, San José
Judge: The Honorable Paul S. Grewal
Trial Date: Not set
Action Filed: August 21, 2015

18 **INTRODUCTION**

19 On November 6, 2015, Plaintiff Hilf filed his motion for judgment on the pleadings and the
20 court "docketed" the motion with a response date of November 20, 2015. Plaintiff asserts in his
21 motion that he is entitled to judgment because an answer was not filed by defendants. As to
22 defendant Grasmuck, plaintiff's assertion and motion is without any merit. Defendant Grasmuck
23 timely filed a response to plaintiff's complaint by filing a motion to dismiss the complaint on
24 October 21, 2015. Plaintiff Hilf has not filed any opposition to Defendant Grasmuck's motion to
25 dismiss.

26 **ARGUMENT**

27 Federal Rules of Civil Procedure Rule 12(a)(4) gives a party fourteen days to file an answer
28 after the court denies a motion to dismiss. Fed.R.Civ.P. 12(a)(4). Recently the District Court of

1 Nevada noted that the majority of courts in this Circuit interpret Rule 12(a)(4) to suspend the time
2 to answer claims and counterclaims that are not subject to a motion to dismiss. *Gamble v. Boyd*
3 *Gaming Corp.*, 2014 WL 1331034, at *3 (D. Nev. Apr. 1, 2014). The *Gamble* court held that, “a
4 timely filed motion to dismiss, which addresses only some of the claims, tolls the time to respond
5 to the remaining claims under Rule 12(a)(4).” *Id.* at 4. The rationale behind this reasoning is that
6 it conserves the resources of the court by avoiding multiple responses to the same pleading. *Id.*

7 Defendant’s motion to dismiss addressed all claims in Plaintiff’s complaint. Accordingly,
8 Rule 12(a)(4) expressly provides that no answer is required until 14 days after the court denies the
9 pending motion to dismiss or 14 days after service of an amended pleading (unless another
10 motion to dismiss is filed). Rule 15(a)(3). Even if the motion to dismiss did not address all
11 claims in Plaintiff’s complaint, Rule 12(a) has been interpreted to toll the time for filing an
12 answer. There is no basis in law for Plaintiff’s motion for judgment and the motion should be
13 denied.

14 CONCLUSION

15 For the reasons stated above, the court should deny Plaintiff’s motion for judgment on the
16 pleadings.

17 Dated: November 13, 2015

Respectfully submitted,

18 KAMALA D. HARRIS
19 Attorney General of California

20 /s/ *Jeff R. Vincent*

21 JEFF R. VINCENT
22 Supervising Deputy Attorney General
Attorneys for Defendant

23 OK2015900681
24 HILF Def Opp to Mtn for Judgment.doc